



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

JAMES DAVID NANNEY,  
Plaintiff,

vs.

THE STATE OF SOUTH CAROLINA,  
Defendant.

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CIVIL ACTION NO. 3:05-0840-26BC

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ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE  
MAGISTRATE JUDGE AND DISMISSING THE CASE WITHOUT PREJUDICE AND  
WITHOUT ISSUANCE AND SERVICE OF PROCESS

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This is a civil rights action. Plaintiff is proceeding *pro se*. The matter is before the Court for review of the report and recommendation (report) of the United States Magistrate Judge in which he suggests that the case be dismissed without prejudice and without issuance and service of process. He also recommends that the dismissal be deemed a “strike” for purposes of the “three strikes” rule of 28 U.S.C. § 1915(g). The report is made in accordance with 28 U.S.C. § 636, and Local Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed his report on April 8, 2005. Plaintiff failed to file any objections to the report.<sup>1</sup> In the absence of objections, the Court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4<sup>th</sup> Cir. 1983).

After a thorough review of the report and the record in this case pursuant to the standards set forth above, the Court adopts the report and incorporates it herein. Therefore, it is the judgment of this Court that the case by **DISMISSED** *without prejudice* and without issuance and service of process. Moreover, the dismissal shall be deemed a “strike” for purposes of the “three strikes” rule of 28 U.S.C. § 1915(g).

**IT IS SO ORDERED.**

Signed this 2<sup>nd</sup> day of May, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
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 HENRY F. FLOYD  
 UNITED STATES DISTRICT JUDGE

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### **NOTICE OF RIGHT TO APPEAL**

Plaintiff is hereby notified that he has a right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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<sup>1</sup>The Court notes that Plaintiff is likely unaware of the Magistrate Judge’s Order since, on April 25, 2005, Plaintiff’s copy of the report was returned to the Clerk marked “RETURN TO SENDER . . . ATTEMPTED NOT KNOWN .” In light of present posture of the case, however, and the arguments contained therein, the Court has no option but to dismiss the action.